IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Notice of Motion No.9l0 of 2005
in
Appeal No.543 of 2004
in
Chamber Summons No. 949 of 2003
in
Suit No. 2470 of 2002

Housing Development Finance Corporation Ltd ..Appellant
vs
Express Industrial Services Pvt Ltd and ors ..Respondents

Mr.P.K.Samdani with Ms Priya Dwarkadas i/b M/s Wadia Gandhy and Co for appellant

Mr. R.A.Dada Sr Counsel i/b Mr D P Desai for respodnents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 2l.3.2005

P.C:

l. We have admitted the appeal and expedited its hearing.Having regard to the nature of the order we proposed to pass, which will operate pending the disposal of the appeal, we think it necessary to set down the reasons.

2. This is a suit by the Appellant in which the Appellant claimed from the Respondents a sum of Rs. 5,07,32,508. The Appellant had granted loan of Rs.3.60 crores to the lst Respondent and Respondent nos. 2 and 3 had executed deeds of guarantee in

favour of the Appellant. The Respondent nos. 2 and 3 have mortgaged residential flat admeasuring about 3430 sq ft in Sterling Apartment situated at Peddar Road as and by way of security for the aforesaid loan.By order dated 7.8.2002 the Receiver was appointed in respect of the mortgage flat. The Receiver called for the valuation and as per the report of the valuer, compensation in respect of this flat was assessed to the tune of Rs 3,05,563 per month. The Receiver, however, fixed the royalty in the sum of Rs.50,000 per month. The appellant filed Chamber Summons to increase the royalty payable from Rs.50,000 to Rs.3,2l,563 per month. The Respondent No. 3 also took out Chamber Summons to decrease the royalty payable from Rs.50,000 per month to Rs.l5,000 per month. By order dated 26.7.2004 the learned single Judge increased the royalty fixed by the Receiver from Rs 50,000 to Rs. l lac per month with effect from l.9.2004.

3. By order dated 7.8.2002 the Receiver was directed to appoint Respondent nos 2 and 3 as agents of the Receiver on usual terms and conditions. This meant that the royalty had to be fixed upon the basis of what the flat would reasonably fetch on agency basis in the local

market. The flat in question is admeasures 3430 sq ft and it is situated at Peddar Road and surrounded by residential buildings. It is not disputed that this is a very posh locality. In respect of this very building where flats were offered on leave and licence basis with security deposit of Rs. 2 crores and monthly compensation of Rs.50,000 in addition to bank guarantee of Rs. 3 crores. Even if the interest accrued on the deposit is taken at 6% p.a the interest itself comes to Rs.l2 lacs plus licence fee of Rs.50,000 per month and thus the amount comes to Rs.l.50 lacs per month. While fixing royalty the court cannot be oblivious of the conditions that exist in this city. The fixation of royalty by the Receiver and the learned single Judge is clearly on lower side.

4. By way of interim order in the Appeal, therefore we fix the royalty for the flat at Rs.l,50,000 per month payable from March 2005. Notice of Motion is accordingly disposed of.